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SUMMARY RECORD OF THE 54TH MEETING

Chairman: Mr. GOERNER (German Democratic Republic)

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The meeting was called to order at 3.15 p.m.

AGENDA ITEM 129: REPORT OF THE AD HOC COMMITTEE ON THE DRAFTING OF AN INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES (continued) (A/39/43, 59, 60 and Corr.1, 158, 163, 203, 318, 396, 413, 473, 552, 561, 596, 611, 616 and 632)

1. Mr. BUBEN (Byelorussian Soviet Socialist Republic) recalled that, five years previously, his country had supported the proposal of a number of non-aligned countries that an international instrument on mercenarism should be drafted which accorded with the principles of the struggle of peoples for liberation and progress. Since then, and despite the condemnation of the international community, mercenarism had not only continued but had increased steadily. Aggressive imperialist circles were using it to destabilize and overthrow legitimate governments in Asia, Africa and Latin America. Thousands of mercenaries had been sent to Nicaragua to paralyse every aspect of that country's life and manuals describing all kinds of terrorist techniques had been prepared for those professional killers. The racist régime of South Africa also used mercenaries to commit acts of aggression against African States.

2. Mercenarism posed a serious threat to the independence of States and violated the inalienable right of all peoples to choose their own destiny. A convention on that subject must therefore be drafted at the earliest possible date. The Ad Hoc Committee had made some progress at its fourth session but, if one considered the overall achievements of its four sessions progress did not seem to have been sufficiently rapid. As usual, a group of delegations was trying to prevent the drafting of a universally acceptable text, invoking various excuses and adopting a policy contrary to that taken by the majority of the membership of the Ad Hoc Committee. Such an attitude had been visible, for instance, in the discussion as to whether the definition of mercenary should cover mercenary activities both in the context of armed conflict and outside that context. At present, mercenaries were generally used when no such conflict existed, to undermine the stability of newly independent States and to oppose national liberation movements. The Convention must therefore cover such situations. Paragraph 16 of document A/AC.207/L.19 noted the concern felt by many countries at the seriousness of acts committed by mercenaries outside the context of armed conflict.

3. With regard to the component parts of the definition, his delegation believed that persons possessing the nationality of the victim State or residing in its territory should not be excluded from the scope of the definition, for mercenarism by such persons was currently extremely prevalent and such an exclusion would create a loophole in favour of them and of those who recruited and used them.

4. The offences committed by mercenaries must be qualified as serious international crimes against peace and security inasmuch as they violated fundamental norms of international law. Attempts were always being made to minimize the threat posed by mercenarism and to equate it with common crime. However, the international community had already given its opinion in General

(Mr. Buben, Byelorussian SSR)

Assembly resolution 34/140, which had been adopted without a vote, when it had described mercenarism as a "universal crime against humanity". The International Law Commission, in which the principal legal systems of the world were represented, had likewise stated that, in so far as the practice of mercenarism was used to infringe State sovereignty, undermine the stability of political régimes or oppose national liberation movements, it constituted an offence against the peace and security of mankind (A/39/10, para. 65).

5. It went without saying that States must be held internationally responsible if they failed to fulfil their obligations under the Convention. His country favoured the inclusion of an article on the international responsibility of States in the event of failure to fulfil obligations entered into under the Convention. The argument that such an article might give rise to a contrario interpretations was meaningless, for the principle of the international responsibility of States for wrongful acts or omissions was a well-established principle of customary international law.

6. The Convention must include provisions which prohibited the use of territory for the training of mercenaries and provided for the adoption of measures to bring those guilty of such an offence to trial and to punish them. Disputes concerning the interpretation and application of the Convention must be settled peacefully, in accordance with Article 33 of the United Nations Charter. Finally, his country viewed the consolidated negotiating basis as a very positive step which would facilitate the future work of the Ad Hoc Committee in drafting a definitive text and was therefore in favour of renewing the Ad Hoc Committee's mandate.

7. Mr. ALMEIDA LIMA (Portugal) said that his delegation had always believed that the future Convention should qualify mercenary activity, whether within or outside the context of armed conflict, and likewise the recruitment, use, financing and training of mercenaries, as a serious crime. Although the Convention must be drafted as soon as possible, it must first be ensured that its text was in line with other international instruments. The consolidated negotiating basis reproduced in section IV of the report (A/39/43) was a step forward but, if the drafting of the Convention was to be expedited, all delegations would have to make an extra effort and adopt a more realistic approach.

8. His delegation regretted that no final agreement had been reached on the definition of the term "mercenary", but was encouraged that the definition given in article 47, paragraph 2, of Additional Protocol I to the Geneva Conventions of 1949 had proved generally acceptable. In that connection, it would be preferable not to limit the interpretation of that provision to the scope of the Protocol since the objective pursued by the Protocol differed from that of that pursued by the Convention. Moreover, while it was in sympathy with the arguments advanced in paragraphs 33 and 34 of the report (A/39/43) in favour of a single definition, it would be prepared to consider other approaches if that meant that a consensus might be achieved.

(Mr. Almeida Lima, Portugal)

9. With regard to the component parts of the definition, his delegation favoured the inclusion of subparagraph (d) of Article 1 and Article 2, as well as the variant given in the consolidated negotiating basis, since what distinguished a mercenary from a political opponent or ideological combatant was his foreign nationality and the material compensation he received for his activity.
10. With regard to the definition of the offences to be covered by the Convention, he wished to reaffirm that the decision taken with regard to the adoption of a dual or single régime must be closely connected with the decision taken with regard to the definition of mercenary. Offences must be described more precisely in order to avoid the inclusion of concepts which were not recognized in all legal systems. It also seemed preferable not to characterize offences, so that national legislators could adopt the most appropriate criterion. If the Ad Hoc Committee did decide to qualify such offences, his delegation would view favourably the proposal of the delegation of Iraq.
11. With regard to complicity and attempt, from a strictly legal standpoint his delegation preferred the alternative modelled on the Hague and Montreal Conventions. With regard to obligations of States, his delegation would like to see a more precise normative formulation of article 11 of the consolidated basis, since subparagraph (d) of that article repeated the idea put forward in article 12. Some provisions of article 11, in particular subparagraph (c), would also have to be replaced.
12. With regard to the issue of State responsibility, which was dealt with in article 22 of the consolidated basis, his delegation endorsed the objections set forth in paragraph 26 of the report. With regard to article 13 of the consolidated basis, it would prefer more concise wording, similar to that of article 7 of the French draft in the previous year's report (A/38/43). Furthermore, a reference to measures "consistent with national and international law" could be included, and the qualification of the measures in question as "reasonable" or "practicable", should be avoided so that the rule remained clear.
13. It would be possible to reach final agreement on jurisdiction only once there was a more exact indication of the régime and the type of offences to be agreed upon. However, his delegation was not in favour of establishing penal jurisdiction for collective persons, since his country's legislation only recognized individual criminal responsibility.
14. With regard to extradition, the approach adopted in article 21, paragraph 4, was preferable, since it established a legal fiction that avoided violating the principle of the territoriality of extradition law. With regard to damage reparation, as in the case of State responsibility, his delegation saw it as being a question of a general principle of international law in respect of which the Ad Hoc Committee could not carry out partial codification.
15. He supported the views set forth in the second and third sentences of paragraph 114 of the report, concerning the saving clause, because they represented

(Mr. Almeida Lima, Portugal)

the most comprehensive and precise reference to guarantees of humanitarian treatment for detainees. His delegation was in favour of extending the mandate of the Ad Hoc Committee.

16. Mr. HOQUOQ (Afghanistan) said that the recent tragic events in the world were witness to the fact that imperialism and neo-colonialism were resorting to mercenaries as another means of taking action against countries liberated from colonial domination and against national liberation movements, with a view to regaining their lost positions and prolonging their direct and indirect exploitation of politically, strategically and economically important regions. That was what was happening in different parts of the world, for example Africa, Central America and South-East Asia.

17. Mercenaries were also being financed, trained and used in Afghanistan, in order to undermine the noble goals of the democratic April revolution and disrupt the peaceful life led by the Afghan people, whose only desire was to eliminate the causes of their economic and social backwardness and who had suffered human and material losses as a result of mercenary activities.

18. The offences perpetrated by mercenaries were a crime against humanity and a means of interfering in the internal affairs of a State. It was therefore urgent for the international community to adopt an international instrument to combat the phenomenon of mercenarism, and the "consolidated negotiating basis" prepared by the Ad Hoc Committee at its most recent session would facilitate further work.

19. With regard to the key issue of the definition of the term "mercenary", his delegation believed that the definition should be both precise and comprehensive. Moreover, the definition set forth in article 47, paragraph 2, of Protocol I additional to the Geneva Conventions of 1949 should be expanded so as to cover situations involving non-international armed conflict and situations where there was no armed conflict.

20. With regard to the criterion of nationality, his delegation shared the views expressed in paragraph 40 of the report of the Ad Hoc Committee.

21. In order to be effective in dealing with mercenary activities, the future Convention must impose upon States an obligation to refrain from recruiting, using, financing or training mercenaries, as well as the obligation to take all the necessary steps to prevent such activities. The Convention must draw a clear distinction between the individual criminal responsibility of mercenaries and the responsibility of States that allowed their nationals to be recruited as mercenaries, authorized the recruitment, use, financing and training of mercenaries in their territory or supported and encouraged their criminal activities.

22. In spite of some opposition, the Ad Hoc Committee was now in a good position to complete its task, and his delegation was therefore in favour of extending that Committee's mandate.

23. Mr. OKELLO (Uganda) said that the use of mercenaries against sovereign and independent States was a serious violation of the basic principles of international law embodied in the Charter of the United Nations. The report of the Ad Hoc Committee indicated that that Committee had made some progress at its most recent session, as reflected in the consolidated negotiating basis. With regard to the question of the definition of a mercenary, his delegation preferred the first of the two alternatives proposed in that text. Article 47, paragraph 2, of Additional Protocol I did not make any reference to situations involving non-international armed conflict and situations where there was no armed conflict, but experience showed that mercenary activities occurred particularly in situations where there was no armed conflict. The definition in question must therefore be broadened to cover such situations.

24. With regard to the question of nationality, his delegation did not believe that its inclusion as an element of the definition was justified. There was no reason to assume that a mercenary was never a national of the victim State. On the contrary, in many cases mercenaries were recruited by nationals or from among nationals of the victim States. Draft article 2 (d) was therefore too restrictive and served no useful purpose. The argument that the nationality clause was needed in order to protect political opposition elements that might be participating in mercenary-like activities did not take account of the motivation factor that was dealt with in draft article 1 (c) of the consolidated working paper. If the nationality criterion was included in the Convention, there would be a risk that it would make the text less effective, create implementation problems and have the effect of encouraging mercenary activities instead of suppressing them.

25. With regard to article 3, concerning the status of mercenaries, the Convention should contain a specific provision on that issue and the principle reflected in the draft article in question was appropriate.

26. With regard to the offences to be covered by the Convention, there should be a stipulation that a criminal offence was committed once a person associated with or enlisted in a group for the purpose of perpetrating any of the offences referred to in the definition of a mercenary. The fact that such a person was subsequently unable to perpetrate the offence contemplated should not exonerate him from criminal liability. The reason for that proposition was to be found in the concept of criminal association, which found expression in most criminal legislations around the world.

27. The question of the characterization of offenses was important for the serious nature of mercenarism made it a crime against the peace and security of mankind. While mercenaries usually directed their activities against the State apparatus in the process they endangered the lives of many innocent people, with utter disregard for human life and foreknowledge of that fact. In considering the draft code of offences against the peace and security of mankind, the International Law Commission had also stated that mercenarism constituted an offence against the peace and security of mankind.

(Mr. Okello, Uganda)

28. The draft articles prepared by Working Group B would be affected by the outcome of the work of Working Group A; his delegation would therefore comment on them at a later stage.
29. As the effectiveness of the future convention would depend to a large extent on the political will of States to observe the convention, his delegation was in favour of including meaningful provisions on the obligations of States, including a special article on the responsibility of States in case they failed to fulfil their obligations under the convention. Finally, he expressed support for extending the mandate of the Ad Hoc Committee.
30. Mr. SUESS (German Democratic Republic) said that his delegation attached great importance to the work of the Ad Hoc Committee because of the series of acts of aggression committed by gangs of mercenaries, on the orders of the imperialist forces, to suppress the peoples' struggle for self-determination, overthrow Governments or violate the sovereignty, territorial integrity or political independence of other States. He cited Cuba, Nicaragua, Angola and Mozambique as examples. Certain imperialist circles even went as far as to prepare manuals describing how to neutralize carefully selected targets.
31. The consolidated negotiating basis was an important step forward even though considerable differences of opinion remained with respect to numerous articles of the convention.
32. Regarding the controversial question of the definition of the term "mercenary", he supported the provisions of articles 1 and 2 of the consolidated negotiating basis. Firstly, because they took duly into consideration the definition contained in the Geneva Conventions that were applicable to situations of international armed conflict and that denied mercenaries combatant or prisoner-of-war status. Secondly, because those articles, taken together with the definition of the term "aggression" and the provisions of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, would ensure that States took action against any kind of mercenary activity, in time of war and in time of peace.
33. The proposed alternative definition would extend the definition of the term "mercenary", contained in article 47, paragraph 2, of Additional Protocol I, to any conflict not just to situations of international armed conflict and was therefore inconsistent with the Geneva Conventions. The alternative definition was not desirable because it took the criteria of the Additional Protocol and applied them mechanically to other situations and conditions. That concerned, in particular, the restrictive element of a mercenary's citizenship or residence. The growing practice of recruiting refugees to commit subversive acts against their own country must be taken into account in the definition. Yet, subparagraph (d) of the proposed alternative would exclude such cases from the scope of the convention.
34. His delegation welcomed the proposal to include a specific article of the status of mercenaries. It was clear that mercenaries must be denied combatant or prisoner-of-war status.

(Mr. Suess, German Democratic Republic)

35. If the convention was to be effective it must clearly define the obligations of States, particularly the obligation not to recruit, use, finance or train mercenaries. In that connection, the consolidated negotiating basis was a good basis for further work. The obligation of States not to tolerate or permit the use of their territories as a basis for such activities, including the transport and transit of mercenaries must also be established. In addition, States must be obliged to prohibit and disband any organization that might be established in their territory to promote mercenarism or to disseminate information and propaganda on mercenarism. Dissemination and propaganda activities were not covered by the right to freedom of opinion, association or assembly.

36. Regrettably, no agreement had been reached as yet on those questions; however, the inclusion of provisions which strengthened the preventive character of the convention was also part of the concrete obligation to combat acts of terrorism accepted in the Final Document by the States which had participated in the Madrid meeting.

37. His delegation therefore welcomed the provision contained in article 10 of the consolidated negotiating basis according to which the offences committed by mercenaries constituted crimes against the peace and security of mankind. He underlined the urgency of concluding a convention as an effective instrument to prevent and punish mercenarism in all its manifestations. He supported the proposal to extend the mandate of the Ad Hoc Committee.

38. Mr. TREVES (Italy) fully agreed with the statement on the item made by the representative of Ireland on behalf of the ten States members of the European Community.

39. The elaboration, in 1984, of the consolidated negotiating basis was no small achievement. All delegations had believed that the preparation of that document (A/39/43, sect. IV) would be useful and all of them had co-operated in its elaboration. Thus the conditions would seem to be set for a productive continuation of the negotiations of the Ad Hoc Committee.

40. However, many problems and difficulties still remained. Firstly there was need for political will in order to negotiate effectively. Delegations representing all viewpoints should participate actively and in a constructive spirit, and should be more flexible in their approach so that consensus might be achieved. Secondly, it must be recognized that all the key issues that had still to be negotiated were interrelated. The definition of the term "mercenary" should be viewed in total independence from the Protocols to the Geneva Conventions of 1949 but in conjunction with the definition of the offences. The questions of jurisdiction and extradition could be decided only if delegations had a clear idea of the content of the various offences. In particular, some way must be found of indicating that the offences covered by the convention were not all of the same gravity and that consequences should be drawn not only with regard to penalties but also with regard to jurisdiction and extradition. The term "mercenary activities" was rather vague; the Ad Hoc Committee should be able to determine the various aspects which it covered.

(Mr. Treves, Italy)

41. Another point that should be borne in mind was the fact that the people who organized mercenary activities and who recruited, financed and trained the mercenaries, were more dangerous to the international community than to the independence of States than were the mercenaries themselves. It was comforting to see that there was likelihood of reaching agreement on offences committed by those persons.

42. It should also be stressed that the Convention must be built on the distinction between rules relating to offences committed by individuals and rules relating to States' obligations. In the opinion of many States, a considerable number of the obligations that were being proposed for inclusion in the Convention did not correspond to existing customary law and, consequently, States should be prudent in assuming new treaty obligations. In that context, his delegation considered that a reasonable solution to the question of preventive measures would go a long way towards alleviating fears and opening the way for concrete measures which, if implemented in good faith and in a spirit of co-operation between States, would be particularly effective in combating mercenary activities.

43. Lastly, in order to reach agreement, all sides should abandon notions that belonged more to legal-political rhetoric than to the drafting of a convention of the kind desired. In that respect, his delegation was pleased to note the reasonable and flexible attitude of the representative of Jamaica in his recent statement on the item. Furthermore, the future convention should not alter the implementation of existing instruments relating to the law of armed conflict and humanitarian law. That was why his delegation had proposed the saving clause reproduced in article 24 of the consolidated negotiating basis.

44. Mr. HAYASHI (Japan), referring to the Ad Hoc Committee's most recent session, said that his delegation was pleased to note that the text of a number of the articles of the draft Convention had been improved and that the alternative formulations of provisions and phrases that were still controversial had been clarified. Even more important, in terms of procedure at least, was the production of a negotiating basis in which individual provisions that had previously been discussed more or less separately had been consolidated.

45. Despite considerable progress, there were still differences of opinion on certain important issues of substance, among them the definitions of "mercenary" and "offence", whether or not mercenarism should be characterized as an offence against the peace and security of mankind and the question of the international responsibility of States.

46. With respect to the definition of "mercenary", his delegation had previously suggested informally that two different provisions should be drafted for two different situations, one relating to cases in which article 47, paragraph 2, of Additional Protocol I would apply and the other to cases not provided for therein. However, it had become clear during the 1984 session that that idea was not acceptable to some delegations. The alternative version contained in the

(Mr. Hayashi, Japan)

consolidated negotiating basis had therefore been formulated, it had the advantage of avoiding the difficult question of devising a suitable criterion for differentiating the two possible situations. His delegation regarded that alternative as a useful proposal and one that deserved serious examination at the next session of the Ad Hoc Committee.

47. In connection with the definition of "offence" and the elements which would constitute such an offence, substantive issues still remained to be resolved. The question had become extremely complicated because the content and drafting of the relevant provisions could vary greatly, depending on the type of definition of "mercenary" that was eventually adopted.

48. At the Ad Hoc Committee's most recent session, the view had been expressed that the offence to be included in the future Convention should be classified as a "crime against the peace and security of a State" or "of mankind". While it might happen that a certain State might provide for a crime against the peace and security of a State, no such concept had ever existed in international law.

49. The International Law Commission was currently studying the concept of an "offence against the peace and security of mankind" with a view to clarifying its elements. What the legal consequences would be of classifying an offence as an offence against the peace and security of mankind was a question which had not been considered. Therefore, not only would it be premature to attempt to introduce such a concept into the Convention but it might even have undesirable effects on the work of the Commission. In any event, such classification would cause great confusion as to its legal implications.

50. A provision on State responsibility, in so far as embodied firmly established rules of general international law, was not only unnecessary but could produce unexpected effects in relation to similar conventions which contained no such provision. Furthermore, from the viewpoint of the codification and progressive development of international law, it would be unwise for the Ad Hoc Committee to deal with the extremely complex topic of State responsibility, which was currently being studied in a comprehensive and detailed way by the International Law Commission.

51. Should its mandate be renewed, the Ad Hoc Committee would continue its work on the consolidated negotiating basis. In that regard, his delegation wished to stress the following points, as a general caveat. First, while offences involving mercenary activities were grave in nature and deserved the condemnation of the international community, it should be recognized that what the Ad Hoc Committee was trying to draft was a type of convention that would establish rules of penal law capable of depriving individuals of their rights. The Committee should therefore endeavour to draft provisions that would guarantee individuals due process of law. Secondly, every effort should be made to achieve consensus texts, bearing in mind that the drafting of a convention which was too far removed from national legislation or from the reality of the international community would only be an academic exercise and the resulting convention would be merely a dead letter.

52. Mr. KRIZ (Czechoslovakia) said that the use of mercenaries had become a serious danger for newly established States that had liberated themselves from the yoke of colonial domination and had embarked on free and independent development. Mercenarism was one of the means used by the forces of reaction and imperialism to prevent the development of new States. Mercenaries had become dangerous instruments of neo-colonialism, a policy aimed at destabilizing young States. There had been many tragic cases in recent history of newly established States in Africa, Central America and Asia falling victim to the violence of mercenaries. Mercenarism, a highly negative phenomenon condemned by the international community, had not only caused immense political and economic damage to those States, but also pain and suffering to their population.

53. As a number of examples showed, the use of mercenaries had become one of the instruments of State terrorism. In that context, the United Nations endeavour to elaborate an instrument intended to combat all aspects of mercenarism with a view to eliminating it totally had been encouraging from the start. The activities of mercenaries should not be considered solely within the limited context of direct participation in an armed conflict. No less significant was the participation of mercenaries in the destabilization of Governments, the disruption of national economies, and acts of sabotage and terrorism. All those aspects must be considered by the future Convention.

54. The consolidated negotiating basis, containing 25 draft articles for the future Convention, was a valuable contribution to the continuing work of the Ad Hoc Committee. Although that document did not provide a definitive solution to a number of important questions on which agreement had not been reached, his delegation remained optimistic and hoped that the Committee would soon complete its work.

55. It must be acknowledged that the text of the consolidated negotiating basis embraced proposals relating to the elimination of mercenarism in all its forms and was not limited to the individual responsibility of mercenaries. His delegation had already advocated on previous occasions that the definition of the term "mercenary" contained in article 47, paragraph 2, of Additional Protocol I to the Geneva Conventions should be extended to cover the activities of mercenaries in other situations. Article 2 of the consolidated negotiating basis met that criterion. The definition must take into account a mercenary's nationality. Recently there had been cases in which mercenaries had been recruited for activities against the very States of which they were nationals. As indicated in the report (A/39/43), that matter had been discussed within Working Group A, and certainly no loopholes should remain in the definition in the Convention.

56. Other important questions were those relating to the obligations of States and State responsibility. His delegation had always advocated the need for the Convention to stipulate concrete obligations of States, not only with respect to abstaining from the recruitment, training, financing and use of mercenaries, but also with respect to prohibiting natural persons, groups or organizations from carrying out such activities in their territory. Logically, any violation of the obligations assumed by States under the Convention should engender international

(Mr. Kriz, Czechoslovakia)

responsibility on the part of the State which committed the violation. Consequently, Czechoslovakia welcomed the inclusion of articles 11 and 22 in the single negotiating text.

57. The qualification of the activities of mercenaries as an offence against the peace and security of mankind (article 10 of the consolidated negotiating basis) was related to the work currently being done by the International Law Commission on the preparation of the Draft Code of Offences against the Peace and Security of Mankind. A problem had arisen there as to whether mercenarism ought to be included among the offences covered by the Code. During the consideration of that item at the current session of the General Assembly, a number of delegations had spoken in favour of its inclusion. The activities of mercenaries, particularly when aimed at violating the sovereignty of States or destabilizing Governments, might, by virtue of their nature and seriousness, combine the characteristics which had been established to qualify certain illicit acts as offences against the peace and security of mankind.

58. Mr. ORDZHONIKIDZE (Union of Soviet Socialist Republics) said that the Soviet Union condemned the use of mercenaries against States and liberation movements struggling for the right of peoples to self-determination as a violation of the United Nations Charter and a crime which, under General Assembly resolution 34/140, constituted a threat to international peace and security.

59. Mercenaries were used to destabilize Governments, create chaos, undermine States' economies, destroy ports and bridges, get rid of political figures, carry out reprisals against the population of a country and take hostages. Examples of the use of mercenaries were numerous: the Government of former Southern Rhodesia had used an entire army of mercenaries. More recently, mercenaries had been used against the Government of the Seychelles. The Government of South Africa used mercenaries to sow terror in neighbouring countries and undermine their economy. South Africa had also utilized mercenaries in Namibia to obstruct the exercise of the Namibian people's right to self-determination. Furthermore, mercenaries were used not only in Africa but also in Asia and Latin America. Armies of mercenaries had also been used in the Middle East.

60. The fundamental problem was not that of individual mercenaries motivated by a desire for personal gain, but that of the powerful hidden forces behind them, which transformed those groups of adventurers into armies equipped with modern weapons in order to jeopardize the stability of whole regions. Nicaragua was the victim of an undeclared war in which those who opposed its revolution had financed an army of mercenaries, providing it with bases in neighbouring countries, money, military supplies, instructors and even manuals with instructions on how to assassinate important persons and carry out reprisals.

61. The Soviet Union was a member of the Ad Hoc Committee, and favoured the elaboration of an effective Convention which would contain the phenomenon of mercenarism and put an end to the crimes of mercenaries. During the first session of the Ad Hoc Committee, a document had been available which had constituted a good

(Mr. Ordzhonikidze, USSR)

basis for the elaboration of a draft convention. Given the existence of the draft submitted by Nigeria, there had been every reason to hope for the swift elaboration of the Convention; however, the forces which benefited from the use of mercenaries continued to find pretexts for holding up the elaboration of the draft. Thus, it had taken nearly four years for a single draft to become available, which constituted a good basis for the continuation of work and represented the successful outcome of the work of the Ad Hoc Committee at its most recent session. Nevertheless, it had not been possible to reach agreement on the first two articles of the draft, which contained the definition of the term "mercenary". There were no problems with regard to the definition of mercenaries in international armed conflicts, since there was a sufficient basis for that in article 47, paragraph 2, of Additional Protocol I to the Geneva Conventions of 1949. However, there were many contradictions concerning the definition of that term in situations outside armed conflict, so that all the paragraphs in article 2 of the draft had been bracketed. An alternative definition of the term "mercenary" had also been proposed.

62. The question whether mercenaries could be citizens of the State against which their activities were directed would have been a meaningful one 10 years earlier, but history currently presented many examples of the use of the citizens of a State to act as mercenaries against that State. The persons involved were members of opposition groups, separatist movements or individual ethnic groups, former members of police forces, criminals or representatives of minority groups and persons with religious beliefs who had been easily manipulated into misguided action by propaganda. Examples could be found in Africa, Asia and Latin America. Thus, the idea that mercenaries could not be citizens of the State against which they directed their activities was intended simply to limit the scope of application of the future Convention and introduce legal loopholes into it.

63. Some delegations wished to stress exclusively the criminal responsibility of mercenaries. One must then ask what the difference was between mercenaries and other criminals, who were also responsible for their crimes. Putting mercenaries on a par with other criminals was an attempt to let mercenaries go unpunished if they were not captured in the act. Nevertheless, even from the standpoint of criminal law, complicity and concealment were crimes. The future Convention must contain provisions for punishing any acts related to the use of mercenaries, including their recruitment, financing and training.

64. The Soviet Union supported the idea that the practice of mercenarism constituted an offence against the peace and security of mankind, in accordance with the conclusion reached by the International Law Commission. It was therefore of utmost importance that the contents of article 10 of the draft Convention should be retained, even though, unfortunately, no agreement had been reached on them.

65. The Soviet Union also attached great importance to the fulfilment by States of their duty to adopt measures to prevent the utilization of mercenaries; national legislation must contain provisions to prohibit organizations which recruited mercenaries. The future Convention ought to contain provisions concerning the obligations of States. However, because of the opposition of certain delegations,

(Mr. Ordzhonikidze, USSR)

it had been impossible to reach agreement on articles 11, 12 and 13 of the draft Convention. His delegation believed that States must be held responsible in cases of non-fulfilment of obligations imposed by international law and that that provision should be contained in the draft Convention as well.

66. The consolidated negotiating basis constituted a good basis for the continuation of work. His delegation supported the extension of the Ad Hoc Committee's mandate, in the hope that a convention which would be an effective instrument against mercenary activities would be speedily elaborated.

67. Mr. AL-DUWAIKH (Kuwait), referring to the question of the characterization of offences to be covered by the future Convention, said that mercenarism should be qualified as a crime against the peace and security of mankind, inasmuch as, firstly, mercenaries committed a crime against the independence, territorial integrity and stability of the States against which their activities were directed and, secondly, mercenaries violated norms of international law, particularly those relating to the maintenance of peace and security.

68. With regard to the question of State responsibility, his delegation wished the future Convention to include an article establishing the responsibility of States which failed to fulfil their obligations under international law, a principle which was consistent with the provisions of the Geneva Conventions of 1949.

69. With regard to the definition of mercenaries, the scope of article 47, paragraph 2, of Additional Protocol I to the Geneva Conventions was overly restrictive, since that article referred to international armed conflicts. The content of that article should be expanded in the future Convention to take into account the activities of mercenaries not only in time of war but also in time of peace, in keeping with the current situation with regard to mercenarism.

70. In his delegation's view, the Convention should also condemn the use of mercenaries to repress peoples fighting for their freedom. As to the offences committed by mercenaries, it supported the outcome of the debates in Working Group A, as reflected in the draft Convention contained in section IV of the Ad Hoc Committee's report (A/39/43). The Convention should clearly lay down the obligation of States to refrain from using, recruiting or training mercenaries as well as their obligation not to permit such criminal acts from being carried out in their territory.

71. With regard to the question of jurisdiction, his delegation felt that the Nigerian draft met the wish to ensure that mercenaries should not go unpunished. Concerning extradition, the Convention should contain a provision that would facilitate the processing of applications for extradition to countries in which mercenaries had committed their offences. Regarding the status of mercenaries, his delegation endorsed the content of article 5 of the draft submitted by Nigeria and considered that mercenaries should have the status not of combatants but of criminals in ordinary law. Finally, with regard to the question of reparation, he felt that States had the duty to make reparation for damages caused by mercenaries.

(Mr. Al-Duwaikh, Kuwait)

72. His delegation favoured the inclusion of a provision on the settlement of disputes, hoped that the consolidated negotiating basis would be given careful study, supported the extension of the mandate of the Ad Hoc Committee and hoped that the Committee would promptly elaborate a draft convention at its next session.

73. Mr. TRAORE (Togo) said that, although some progress had been made during the Ad Hoc Committee's sessions, some States had expressed misgivings and reservations regarding the timeliness and even the usefulness of elaborating a convention on the question. However, the activities of mercenaries had been unequivocally condemned in numerous resolutions of the United Nations and the Organization of African Unity.

74. The acts committed by mercenaries included murder, torture, rape, destruction of public and private property and endangerment of the life, health, dignity, liberty and peace of individuals, the stability and independence of new States and the right of peoples to self-determination. Such acts could not be equated with common crimes and, accordingly, they should be considered and treated as crimes against humanity and as a threat to international peace and security.

75. All situations in which mercenaries might conduct their activities must be taken into account: in international armed conflicts, in civil or internal armed conflicts or in time of peace. The last-mentioned case required particular attention, since it involved offences against the independence, sovereignty, unity and territorial integrity of new States, as well as attempts to overthrow their Governments. Consequently, the Ad Hoc Committee should draw a clear distinction between the first two cases and the last one, so as to permit a gradual development of international law that would take into account the different forms which mercenarism assumed in the modern world. The definition in Additional Protocol I to the Geneva Conventions should be expanded to cover situations other than armed conflicts, in particular, offences committed by armed bands in order to spread terror in States and destabilize their Governments. A distinction should also be drawn between mercenaries and the individuals or bodies corporate which recruited, used, trained or financed them.

76. With regard to preventive measures, his delegation suggested that they should be applied by means of permanent, coherent and effective surveillance at the international level of the activities of individuals or groups preparing to commit acts covered by the Convention, which meant that all States would have to adopt strict legislative and administrative measures.

77. Mr. AENA (Iraq) said that, at its last session, the Ad Hoc Committee had made progress which, although limited, would ultimately result in the successful elaboration of the desired Convention. It had been possible to arrive at a consolidated negotiating basis, but the fact that many of its provisions remained in brackets indicated that there were still some unresolved differences.

78. On the question of the qualification of offences, his delegation considered that the offences committed by mercenaries were offences against the peace and

(Mr. Aena, Iraq)

security of States because they were directed against their territorial integrity, sought to destabilize their Governments and were also directed against the States' innocent inhabitants. However, in order for them to be considered crimes against humanity, the objective pursued by the mercenary must be ascertained in order to determine whether a serious violation of international law was involved. The Ad Hoc Committee should carefully study the question of the gravity of the offence of mercenarism, bearing in mind the norms of international public law and international criminal law.

79. With regard to the definition of a mercenary, he had doubts as to the possibility of drafting a single definition, for the reasons set out in paragraph 36 of document A/39/43. It must be borne in mind that Additional Protocol I to the Geneva Conventions of 1949 covered only the question of the mercenary in time of war, but not in time of peace. It was therefore inappropriate to assert that the Convention should not diverge from the Protocol, since the latter did not cover all the situations included in the proposed Convention.

80. As to the component parts of the definition, his delegation objected to excluding from the scope of the definition persons possessing the nationality of the victim State, for the reasons indicated in paragraph 40 of document A/39/43.

81. The saving clause must be given a strict interpretation, in order to avoid stripping the Convention of its true purpose. The Ad Hoc Committee must devise a way of establishing a logical, direct and reasonable link between article 24 and the other articles of the consolidated basis, with a view to achieving an equilibrium and thus avoiding any violation of existing international instruments on law governing war and humanitarian law. It must be borne in mind that the 1977 Protocols had not yet entered into force, which meant that it was premature to think that they should not be changed.

82. With regard to the obligations of States, his delegation believed that the provision laid down in draft article 11 should specify reasonable and significant obligations. It was in the light of the obligations in question that it would be possible to assess the extent of the international responsibility of States that violated the obligations they undertook under the future Convention. Consequently, article 22 on State responsibility should not be deleted on the pretext that other international instruments, such as the International Convention against the Taking of Hostages, did not deal with that issue. Such a general comparison was no more than a superficial analysis that did not take account of the fundamental difference between the seriousness of the offences perpetrated by mercenaries and that of the crime of hostage-taking. The convention under preparation must therefore contain a provision on State responsibility, along the lines of the provision set forth in article 91 of Protocol I additional to the Geneva Conventions of 1949.

83. With regard to the settlement of disputes, which was dealt with in draft article 25, that text provided a good basis for a compromise solution, since it guaranteed that countries could adopt the necessary methods.

84. Mr. SANGSOMSAK (Lao People's Democratic Republic) said that the permanent threat that mercenary practices represented had prompted a growing number of countries, particularly the developing countries, to stress the need for prompt adoption of an international convention to eliminate that degrading scourge. An international legal instrument would safeguard countries that had chosen the path of justice, equality and social progress in their endeavour to defend their independence, sovereignty and territorial integrity. Such a safeguard was particularly necessary, since the illegal means in question were increasingly being used by countries pursuing a colonialist, hegemonistic and imperialist policy with the aim of destabilizing and overthrowing Governments whose policies were not to their liking.

85. Consequently, while declaring themselves in favour of a convention of the type in question, some countries were using all kinds of pretexts to obstruct its preparation or limit its scope so that it would not be in keeping with current reality. However, the Ad Hoc Committee had made some progress at its most recent session in adopting the consolidated negotiating basis, which formed a sound starting point for subsequent consideration of the question.

86. His delegation welcomed the draft articles that defined a mercenary both in the context of armed conflict and in peacetime, thus permitting the Convention to cover the issue of mercenaries in all its aspects. That new approach was based on a broad consensus that was underpinned by the concept of an international instrument geared to all situations, taking account, for example, of the fact that mercenary offences against peoples fighting to gain national independence were perpetrated in peacetime. On the other hand, the approach whereby a sole definition would be adopted was not in keeping with that goal.

87. With regard to article 2 (d), his delegation did not consider it necessary to make an explicit reference to the nationality of mercenaries, because regardless of whether or not they were nationals of a given State they carried out their activities with the purpose of gaining a personal advantage and in any case represented an equal threat to international peace and security. Moreover, article 2 (a) dealt with the same issue in a general manner. The deletion of paragraph (d) would broaden the scope of the Convention so as to cover all types of mercenaries, including stateless persons recruited to commit acts of destabilization and subversion directed against their country of origin.

88. With regard to the specific qualification of offences (art. 10), his delegation believed that it was justifiable strongly to condemn mercenarism, which was a pernicious phenomenon that had respect for neither laws nor borders, and to qualify it as a crime against the peace and security of mankind. The Ad Hoc Committee would thus be making a major contribution to the decision that the International Law Commission would have to adopt in due course on the inclusion of mercenarism in the draft code of offences against the peace and security of mankind, which was currently before it.

89. On the whole, his delegation considered acceptable the drafting of article 11, which was a provision of fundamental importance because it dealt with the

(Mr. Sangsomsak, Lao People's  
Democratic Republic)

obligations of States. Mercenaries would be unable to carry out their activities without a request from or the complicity of one or more States. If a genuine attempt was to be made to eliminate mercenarism, any States that might carry out or tolerate such unlawful activities in their territory must be prevailed upon to refrain from doing so and be required to adopt appropriate legislation to prevent such activities and punish those who carried them out.

90. Another important question was the issue of State responsibility (art. 22). In addition to the criminal responsibility of the mercenary, the future Convention must provide for the international responsibility of States, since it was unlikely that mercenaries would act without their co-operation. Any opposition to the inclusion in the Convention of an article on State responsibility would be unjustified, because the principle of State responsibility was an established principle under international customary law. Furthermore such a provision would have a deterrent effect on individuals and oblige States to adopt effective measures to prevent and suppress mercenarism.

91. With regard to damage reparation (art. 23), given its position on the question of the obligations of States and their international responsibility, his delegation believed that it would be logical to include a separate article on reparation. Furthermore, the scope of article 23 should be broadened so as to provide for the obligation of States to make reparation for damages resulting not only from acts committed by them in violation of the Convention but also from acts that they should have prevented but had not prevented.

92. His delegation hoped that the Ad Hoc Committee would be able to complete the draft Convention before it in the near future and therefore associated itself with the delegations that had requested that its mandate should be extended.

AGENDA ITEM 124: PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES (continued)  
(A/C.6/39/L.7)

93. Mr. KALINKIN (Secretary of the Committee) said that he wished to announce that the delegations of Morocco and Uganda had joined the sponsors of draft resolution A/C.6/39/L.7.

The meeting rose at 5.50 p.m.